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Senate Bill _____
By _____

House No. HB1121
By Venable

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 13, Part 2; Section 40-35-120 and Title 40, Chapter 35, Part 5, relative to the punishment of imprisonment for life and imprisonment for life without the possibility of parole for certain offenses.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-13-202, is amended by deleting subsection (b) in its entirety and substituting instead the following:

(b) A person convicted of first degree murder shall be punished by:

(1) Death; or

(2) Imprisonment for the person's natural life.

SECTION 2. Tennessee Code Annotated, Section 39-13-204, is amended by deleting the first sentence of subsection (a) and substituting instead the following:

Upon a trial for first degree murder, should the jury find the defendant guilty of first degree murder, it shall not fix punishment as part of the verdict, but the jury shall fix

the punishment in a separate sentencing hearing to determine whether the defendant shall be sentenced to death or to imprisonment for life.

SECTION 3. Tennessee Code Annotated, Section 40-35-501, is amended by deleting the words “without possibility of parole” from subsection (a)(2).

SECTION 4 Tennessee Code Annotated, Section 40-35-501, is amended by deleting subsections (g) and (h) and substituting instead the following:

(g) There shall be no release eligibility for a defendant receiving a sentence of imprisonment for life as a repeat violent offender.

(h) There shall be no release eligibility for a defendant receiving a sentence of imprisonment for life for first degree murder.

SECTION 5. Tennessee Code Annotated, Section 40-35-120, is amended by deleting from subsection (f) the words “without possibility of parole”.

SECTION 6. Tennessee Code Annotated, Section 39-13-204, is amended by deleting subsection (e)(2) and substituting instead the following:

(2) The trial judge shall provide the jury two (2) separate verdict forms, as specified by subdivisions (f)(1) and (g)(2)(B). The jury shall be instructed that a defendant who receives a sentence of imprisonment for life shall be imprisoned for such defendant’s natural life and shall never be eligible for release on parole or otherwise.

SECTION 7. Tennessee Code Annotated, Section 39-13-204, is amended by deleting the first and second sentences of subsection (f)(1) and substituting instead the following:

If the jury unanimously determines that no statutory aggravating circumstances have been proven by the state beyond a reasonable doubt, or if the jury unanimously determines that a statutory aggravating circumstance or circumstances have been proven by the state beyond a reasonable doubt but that such circumstance or circumstances have not been proven by the state to outweigh any mitigating circumstances beyond a reasonable doubt, the sentence shall be imprisonment for life.

The jury shall then return its verdict to the judge upon a form provided by the court which may appear substantially as follows:

PUNISHMENT OF IMPRISONMENT FOR LIFE

We, the jury, unanimously find that the sentence shall be imprisonment for life.

SECTION 8. Tennessee Code Annotated, Section 39-13-204, is amended by deleting subsection (f)(2) in its entirety.

SECTION 9. Tennessee Code Annotated, Section 39-13-204, is amended by deleting subsection (h) and substituting instead the following:

(h) If the jury cannot ultimately agree on punishment, the trial judge shall dismiss the jury and such judge shall impose a sentence of imprisonment for life. The judge shall not instruct the jury, nor shall the attorneys be permitted to comment at any time to the jury, on the effect of the jury's failure to agree on a punishment.

SECTION 10. Tennessee Code Annotated, Section 39-13-204, is amended by deleting from subsection (i) the language "or sentence of imprisonment for life without possibility of parole".

SECTION 11. Tennessee Code Annotated, Title 39, Chapter 13, Part 2, is amended by deleting Sections 39-13-207, and 39-13-208, in their entirety.

SECTION 12. Tennessee Code Annotated, Section 39-13-203, is amended by deleting subsection (d) and substituting instead the following:

(d) If the court determines that the defendant was a person with mental retardation at the time of the offense and the trier of fact finds the defendant guilty of first degree murder, there shall be no separate sentencing hearing and the defendant shall be sentenced to imprisonment for life.

SECTION 13. Tennessee Code Annotated, Section 39-13-206, is amended by deleting subsection (d)(2) and substituting instead the following:

(2) Modify the punishment to imprisonment for life.

SECTION 14. Tennessee Code Annotated, Section 39-13-206, is amended by deleting subsection (e) and substituting instead the following:

(e) In the event that any provision of §§ 39-13-202 - 39-13-205, or this section or the application thereof to any individual or circumstance is held to be invalid or unconstitutional so as to permanently preclude a sentence of death as to that individual, the court having jurisdiction over such individual previously sentenced to death shall cause such individual to be brought before the proper court which shall sentence such person to imprisonment for life.

SECTION 15. Tennessee Code Annotated, Section 39-13-204, is amended by deleting the final sentence of subsection (k) and substituting instead the following:

If the trial court, or any other court with jurisdiction to do so, orders that a defendant convicted of first degree murder (whether the sentence is death or imprisonment for life) be granted a new trial, either as to guilt or punishment or both, the new trial shall include the possible punishments of death or imprisonment for life.

SECTION 16. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 17. This act shall take effect on July 1, 1995, the public welfare requiring it and shall apply to all offenses for which a sentence of imprisonment for life is authorized that are committed on or after such date.